

REMARKS

This application is amended in a manner believed to place it in condition for allowance at the time of the next Official Action.

Claims 1-10 are amended. Support for the amendment may be found generally throughout the specification, and is intended to clarify the components in the composition.

Claims 1-10 remain pending.

Claims 3, 6-8 and 10 are withdrawn from further consideration as being directed to non-elected species.

The Official Action objects to the present specification for not being consistent with the oath and declaration. The present specification is amended in a manner consistent with the oath, declaration and Application Data Sheet.

Therefore, applicant respectfully requests that the objection be withdrawn.

Claims 1, 2 and 4 are rejected under 35 USC §112, second paragraph, as being indefinite.

Specifically, claims 1, 2 and 4 are rejected for reciting improper Markush groups and for not clearly reciting the components of the composition. The present claims are amended to recite the components of the composition in a clear manner.

Therefore, applicant respectfully requests that the indefiniteness rejection be withdrawn.

Claims 1, 2, 4, 5 and 9 are rejected under 35 USC §103(a) as being unpatentable over the combination of BOMBARDELLI et al. U.S. Patent No. 5,665,335 (BOMBARDELLI '335), BOMBARDELLI et al. U.S. Patent No. 6,267,996 (BOMBARDELLI '996), CHO et al. U.S. Patent No. 5,529,769 (CHO) and PLASCHKE U.S. Patent No. 6,409,996 (PLASCHKE). Applicant respectfully disagrees.

BOMBARDELLI '335 is offered for teaching a cosmetic lotion comprising 1% visnadin.

BOMBARDELLI '996 is offered for teaching a cosmetic cream comprising 0.5% Escin beta-sitosterol fitosome.

CHO is offered for teaching a cosmetic gel comprising 1% Gingko biloba.

PLASCHKE is offered for teaching a cosmetic composition comprising extracts of flavone content of Gingko biloba.

The position of the Official Action is that it would have been obvious for one of ordinary skill in the art to combine the teachings of the four publications since all of the publications teach compositions for the cosmetic industry.

However, the intended uses of the compositions from the four publications are different. BOMBARDELLI '335, for example, discloses a hair loss and seborrhea treatment composition, whereas the other three publications are directed to skin treatment compositions. None of the skin treatment compositions are used for the same purpose. BOMBARDELLI '996 treats acne, CHO

stimulates collagen synthesis, and PLASCHKE provides UV protection.

Thus, one of ordinary skill in the art would not have a reason to combine a hair loss composition along with an acne, collagen synthesizing, and/or UV treatment, as the publications all solve different problems.

Moreover, even if one were to combine the publications as offered in the Official Action, their combination fails to teach the synergistic effects obtained by the recited combination of vasoactive agents. The Examiner's attention is respectfully directed to the Declaration Under Rule 132 filed with this amendment.

The declaration compares a gel formulation of the claimed invention comprising the three vasoactive agents to three gel formulations including a single active ingredient, i.e. as disclosed by BOMBARDELLI '335, BOMBARDELLI '996 and CHO/PLASCHKE, and a single placebo formulation. Each of the gel formulations includes the same excipient base.

The gel formulations are compared for their ability to reduce cellulite in Tables 1 and 2 (e.g. in terms of thigh macrorelief (Rz) and thigh circumference (cm)). The tables demonstrate that the claimed invention (group 5) with all three active ingredients proved more effective in reducing thigh macrorelief and thigh circumference than the formulations according to the cited publications (groups 2, 3, and 4). The

tables further demonstrate that the three active ingredients behave synergistically, as the effect of three components together is more than the sum of the effects of each single component.

Thus, in view of the above, the proposed combination fails to render obvious claims 1, 2, 4, 5 and 9.

Therefore, applicant respectfully requests that the rejection be withdrawn.

In view of the foregoing Remarks, applicant believes that the present application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



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Robert Madsen, Reg. No. 58,543  
745 South 23<sup>rd</sup> Street  
Arlington, VA 22202  
Telephone (703) 521-2297  
Telefax (703) 685-0573  
(703) 979-4709

RAM/lrs

**APPENDIX:**

The Appendix includes the following item:

- Declaration Under Rule 132